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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

**Northern Plains Resource Council, et  
al.,**

Plaintiffs,

v.

**U.S. Army Corps of Engineers, et al.,**

Defendants,

and

**TransCanada Keystone Pipeline, LP,  
et al.,**

Defendant-Intervenors.

Case No. 4:19-cv-44-BMM

**Federal Defendants' Motion to  
Expedite Briefing and  
Consideration of Their Motion to  
Stay Pending Appeal (ECF No. 131)  
and Request for Administrative  
Stay**

Federal Defendants move to expedite briefing and consideration of their motion to stay portions of the Court's April 15 Order pending appeal (ECF No. 131). Specifically, we propose the following briefing schedule and request that the Court rule on the motion to stay by no later than **May 11, 2020**, at which time Federal Defendants intend to seek relief in the Ninth Circuit the following day.

In addition, Federal Defendants request an administrative stay of Paragraphs 5 and 6 in the Court's April 15 Order while the Court considers the motion to stay. Defendant-Intervenor TC Energy Corporation has previously represented to this Court that it "will not commence construction through [water of the United States] without receiving [pre-construction notice] verifications" from the U.S. Army Corps of Engineers. TC Energy Reply in Support of Mot. for Summ. J. 2, ECF No. 113. To facilitate the Court's consideration of the motion to stay, the Corps represents that it will not verify any of TC Energy's pre-construction notices during the pendency of any administrative stay.

Good cause exists for expedition and an administrative stay:

1. As explained more fully in the motion for stay, those portions of the Court's April 15 Order that vacated Nationwide Permit 12 and broadly enjoined the Corps from issuing verifications under the Permit have extraordinary implications. The breadth of those remedies potentially captures any and every utility line project in the country that is currently using or planning to make use of

Nationwide Permit 12 for construction, repair, maintenance, or removal of the utility line. This would include drinking water lines, fiber-optic cable lines, electrical lines, and telephone lines. Plaintiffs did not request such broad relief. Instead, Plaintiffs explicitly disavowed vacatur and sought injunctive relief only as to the Keystone XL pipeline. And, in any event, Plaintiffs only could have had standing—though we do not concede that point—for a Keystone-specific remedy because they only alleged injuries emanating from that specific project.

2. Under local rules, briefing on the motion for stay would not be completed until May 25, 2020. *See* L.R. 7.1(d)(1). Given the breadth of activities affected by the Court’s Order, the Corps, the regulated community, and the public have a significant interest in a much faster decision than local rules contemplate.

3. Thus, in place of the briefing schedule in local rules, we propose:

- Any memoranda in support of the motion to stay be due no later than **April 29, 2020**;
- Any memoranda in opposition be due no later than **May 6, 2020**;
- Any reply by the movants be due no later than **May 8, 2020**.

4. We have conferred with counsel for the other parties regarding expedition. Plaintiffs oppose the motion to expedite and the administrative stay. Defendant-Intervenors all support expedition and the proposed briefing schedule.

Based upon the foregoing, we respectfully request that the Court expedite briefing on (and its consideration of) the motion for stay and also administratively

stay Paragraphs 5 and 6 of the April 15 Order during that briefing and consideration.

Date: April 27, 2020

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rules 7.1(d)(2)(E), the above motion is proportionately spaced, has a typeface of 14 points and contains 502 words, excluding the caption, signature block, and certificates of service and compliance.

*Bridget K. McNeil*  
Bridget Kennedy McNeil

**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2020, I filed the above pleading with the Court's electronic case management system, which caused notice to be sent to all parties.

*Bridget K. McNeil*  
Bridget Kennedy McNeil